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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO. 79-1978

HANS H.H. WEEREN and STEPHEN C. JENNINGS,

Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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THE PEOPLE OF THE STATE
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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioners, Hans H.H. Weeren and Stephen C. Jennings, pray that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of California affirming their state convictions for catching swordfish with the aid of an airplane within the United States Fishery Conservation Zone, entered in the above-entitled case on March 24, 1980, which became final on

May 14, 1980.

OPINIONS BELOW

The opinion of the Appellate Department of the Superior Court of the State of California for the County of Ventura, reversing the convictions, is unreported. A copy of the opinion appears in Appendix A hereto. The opinion of the California Court of Appeal, Second Appellate District, reversing the convictions, is officially unpublished but appears at 155 Cal.Rptr. 789. A copy of the opinion appears in Appendix C hereto. The opinion of the Supreme Court of California, affirming the convictions, appears at 26 Cal.3d. 654, 163 Cal.Rptr. 255, and 607 P.2d. 1279. A copy of the opinion appears in Appendix E hereto.

JURISDICTION

The judgment of the Supreme Court of California was entered on March 24, 1980. The judgment became final on May 14, 1980, with the denial of petitioners' petition for rehearing. The Supreme Court of California is the highest court of California. See,

California Constitution, Article 7. See, also, California Rules of Court, Rule 28(a).

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(1) and (3).

QUESTIONS PRESENTED

1. Whether California may punish "California citizens" for acting on the high seas, outside California's and the United States' seaward boundary, in a manner which is unlawful in California but lawful under federal and international law.

2. Whether California's exercise of criminal jurisdiction over "California citizens" for acts performed within the Federal Fishery Conservation Zone, between three and two hundred miles offshore is in violation of 16 U.S.C. §1851 (a)(4), which provides that fishery conservation and management measures shall not discriminate between residents of different states.

3. Whether enactment 16 U.S.C. §1812, which declares that exclusive fishery management authority within the

Federal Fishery Conservation Zone rests in the Federal Government has rendered state extraterritorial regulation of fishing by "state citizens" impermissible.

4. Whether the Ventura County California Municipal Court may order the suspended forfeiture of the federally documented vessel used by the defendants in the fishing activity involved when neither the owner nor any mortgagees of the vessel were parties to the action.

5. Whether California may punish a person under a state law expressly intended to be applied territorially because the state legislature which passed the statute in question mistakenly implicitly believed that the state's territory encompassed the location at which the defendants' acts occurred.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fourteenth Amendment and Article 1, Section 8, the Commerce Clause, Article

6, Clause 2, the Supremacy Clause of the Constitution of the United States, 16 U.S.C. §1801, et. seq., the Fishery Conservation and Management Act of 1976, and 46 U.S.C. §961(a) and (b) appear in Appendix G hereto.

STATEMENT

On October 11, 1977, a two-count complaint was filed against petitioners and one Ronald Tegland in the Ventura County Municipal Court, State of California, Oxnard Department, charging violations of California Fish and Game Code, section 2000, the statute providing for fishing only in accordance with state administrative regulations, in this case, regulations prohibiting swordfishing with the assistance of an airplane. The trial commenced on November 29, 1977, before the Honorable Edwin M. Osborne, a judge of said court, and a jury. On December 2, 1977, the jury returned a verdict of acquittal as to Count 1 of the complaint and a verdict of guilty as to Count 2 thereof, taking a swordfish with the assistance of an airplane, ten miles from the

nearest California land area, (R.T. p. 68)*.

How Federal Questions Raised

A. During the trial, petitioners objected to the question:

> "Mr. Mahon, did the events to which you testify that occurred on September 28, occur in Ventura County?" (R.T. p.90).

Upon that objection, a motion to dismiss the prosecution for lack of jurisdiction, supported by a lengthy brief was made and extensively argued (Augmented R.T. p.p. 10-50.) The motion to dismiss was denied and the convictions followed.

The evidence established conclusively that the acts of defendants occurred ten miles seaward of the nearest United States land area. Petitioners argued that federal treaties and federal statutory and decisional law prohibited the exercise of California

* The reference "R.T." is to the Reporter's Transcript on appeal from the judgment of the Municipal Court to the three tiers of the State Appellate Courts.

criminal jurisdiction over the acts involved because of their location. The California Supreme Court ultimately agreed with petitioners that the acts were outside California but upheld the convictions on the basis of the State's ability to regulate "state citizens".

Petitioners further argued that the Federal Fishery Conservation and Management Act of 1976 (16 U.S.C. §1801, et.seq.) prohibited such exercise of criminal jurisdiction on a federal statutory basis. Additionally, petitioners argued that the case of Skiriotes v. Florida, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941), which apparently allows extraterritorial jurisdiction, was based on a fundamentally erroneous legal premise and is a defective statement of the law.

Upon the convictions, petitioner Weeren was sentenced to two days in jail, a fine of $625.00 and three years probation while petitioner Jennings was sentenced to one day in jail, a fine of $315.00 and three years probation. Ronald Tegland, not a party to the

action, had his boat forfeited (See Appendix H).

B. A due and timely appeal was prosecuted by petitioners to the Appellate Department of the Superior Court of California, for the County of Ventura which resulted in a reversal and later transfer of the case to the California Court of Appeal, Second Appellate District, Division 5, and a similar decision (reversal of the conviction). The reversal in the Court of Appeal resulted in review by the California Supreme Court and, ultimately, an affirmance.

The federal questions presented on appeal to all three appellate courts were identical and all three courts used the same briefs. The questions were:

(1) The State of California has no subject matter jurisdiction, either legislative or judicial over the charged conduct in that the conduct occurred outside California, and outside the United States, to wit: more than three miles from the mainland coast of California and any of the Channel

Islands.

(2) The court had no jurisdiction to order the forfeiture of the vessel "Comanche", a vessel of the United States.

C. In, finally, affirming the convictions (and overriding the opinions of the two intermediate appellate courts) the California Supreme Court raised, as a justification of its affirmance, the incredible proposition that because the state legislature, prior to 1965 (United States v. California, 381 U.S. 139, 85 S.Ct. 1401, 14 L.Ed.2d. 296, [1965]). thought California's boundaries extended further than they really did, the legislature implicitly extended the scope of penal laws, including Fish and Game Code section 2000, to extraterritorial locations, even though state law is explicitly stated to apply only territorialy.

D. Petitioners petitioned for a rehearing to the California Supreme Court on the ground that that court did not address the issue of forfeiture of the vessel "Comanche". That petition

for rehearing was denied and the California Supreme Court's opinion and judgment became final on May 14, 1980.

REASONS FOR GRANTING THE WRIT

I. THE CALIFORNIA COURTS' CONVICTIONS OF PETITIONERS ARE VOID BECAUSE OF A LACK OF JUDICIAL JURISDICTION.

The California Supreme Court, in its opinion affirming the convictions, admits that the location at which the petitioners did the charged acts and were arrested was outside of California (Appendix E-20). Nevertheless, it affirmed the convictions on the basis of Skiriotes v. Florida, supra. Petitioners urge that the time has now come for this court to re-examine that 1941 case. The passage of the Fishery Conservation and Management Act of 1976, which became effective March 1, 1977, six months before the acts involved herein occurred, as well as the increasing federal and international involvement in oil leasing and other offshire activities renders that case a definite liability to the national ability to control offshore matters.

The court in Skiriotes, supra, used an erroneous premise to allow state criminal jurisdiction over acts done in international waters. It based its decision on Old Dominion S.S. Co. v. Gilmore (The Hamilton), 207 U.S. 398, 28 S.Ct. 133, 52 L.Ed. 264, (1907), which was a civil jurisdiction case and one of the forerunners of the case which declared the concept of the transitory civil cause of action (Tennessee Coal, Iron and Railroad Co. v. George, 233 U.S. 354, 34 S.Ct. 587, 58 L.Ed. 997 [1914]). Going from authority allowing transitory civil causes of action to be enforced extraterritorially to allowing a state to punish persons designated as "state citizens" is a clear conceptual error. The Skiriotes, supra, case should be re-examined and the premise established thereby, corrected. States should not have judicial jurisdiction over persons acting wholly outside their territory.

II. CALIFORNIA'S PUNISHMENT OF PETITIONERS FOR DOING ACTS LAWFUL WHERE DONE, WITHIN THE UNITED STATES FISHERY

CONSERVATION ZONE, BUT UNLAWFUL IN CALIFORNIA ON THE BASIS OF THEIR "CALIFORNIA CITIZENSHIP" DISCRIMINATES AGAINST CALIFORNIANS

16 U.S.C. §1851 establishes national standards for fishery conservation and management. This provision overrides any state measures along those lines, (U.S. Const. Art. VI, Cl. 2). Those standards include the provision that:

> "(4) Conservation and management measures shall not discriminate between residents of different states. . . ." (16 U.S.C. §1851[a][4], Appendix G-3, 4).

The premise which the California Supreme Court has asserted: That California can punish its "citizens" for acting contrary to modes approved in California in locations where such modes are permissible, discriminates against Californians and is therefore in violation of the Fishery Conservation and Management Act.

III. THE FISHERY CONSERVATION AND MANAGEMENT ACT HAS EXPRESSLY PROHIBITED SUCH CRIMINAL REGULATION AS CALIFORNIA HAS ASSERTED HERE.

"The United States shall exercise

> exclusive fishery management authority . . . over the following: (1) All fish within the fishery conservation zone. . . . " (16 U.S.C. §1812, Appendix G-3).

The conviction of petitioners for catching swordfish with the aid of an airplane ten miles from the nearest land area is violative of the statute. Since the United States has the exclusive authority over that zone of ocean, at least after March 1, 1977, California may not punish petitioners for the act done on September 28, 1977, which is the basis of their convictions.

This case does not involve the "landing" of fish, caught elsewhere, in a state. Because petitioners' boat was boarded on the high seas by state agents who seized the fish at that location (R.T. p.p. 171, 180, 181) this is a pure case of state extraterritorial regulation in the fishery conservation zone set up by 16 U.S.C. §1811 (Appendix G-2).

Federal preemption is a doctrine having its roots in the Supremacy Clause

of the Constitution of the United States (Appendix G-1). Fishing by a federally documented vessel is interstate commerce (Douglas v. Seacoast Products, 431 U.S. 265, 97 S.Ct. 1740, 52 L.Ed.2d. 304, [1977]) which invokes the Commerce Clause of the Constitution (Appendix G-1).

Because 16 U.S.C. §1812 has decreed that exclusive fishery mangement authority is in the United States, the state laws conflicting with that regulation must fall, (Jones v. Rath Packing Co., 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed.2d. 604, [1977]). This court should strike down the convictions because they are impermissible state regulation in an area of exclusive federal concern.

IV. THE TRIAL COURT'S ORDER FORFEITING THE VESSEL USED IN THE FISHING VIOLATED DUE PROCESS OF LAW AND FEDERAL STATUTES RELATING TO FEDERALLY DOCUMENTED VESSELS.

At the sentencing phase of the trial, the court ordered the forfeiture of the boat, which was a vessel of the United States (R.T. p.p. 28, 124, 125) requiring non-party Ronald Tegland, owner of the

boat, to sign a "forfeiture order" on pain of having his boat immediately seized, (Appendix H). Tegland had been acquitted by the jury on the trial of the case.

There was no notice of any request or motion for forfeiture of the vessel "Comanche". There was a notice of motion for forfeiture of the fish which were seized. Neither Mr. Tegland nor any mortgagees of the "Comanche" had any prior notice of the forfeiture before the prosecutor asked the court, in unreported oral proceedings during Weeren's and Jennings' sentencing, to forfeit the boat.

If there were mortgagees of the vessel (there was, Production Credit Association, 2031 Knoll Drive, Ventura California, held a preferred ship's mortgage thereon) then no forfeiture could be adjudged other than by a federal court (46 U.S.C. §961[a], Appendix G -). Further, no forfeiture could be adjudged unless the morgagee, in this case Production Credit Association, were involved in the

illegal activity by authorizing, consenting or conspiring to effect the illegal act (46 U.S.C. §961[b], Appendix G-5).

This case presents the logical outgrowth of a concern voiced in 1943 by Mr. Justice Black in a strong dissent:

> ". . . But the principle laid down here involves far more than a fishnet, for under it state courts are authorized through in rem proceedings to seize and condemn for violations of local law, any equipment or vessel employed in maritime activity. . . " (C.J. Hendry Co. v. Moore, 318 U.S. 133, 154, 63 S.Ct. 499, 510, 87 L.Ed. 663, 675, (1943) Black, J. dissenting).

In this case there was not even an in rem proceeding. Therefore, the forfeiture violates due process of law as well as the federal shipping statute.

V. THE CALIFORNIA SUPREME COURT'S ASSERTION OF LEGISLATIVE JURISDICTION OVER THE CHARGED ACTS VIOLATES DUE PROCESS OF LAW.

In avoiding a troublesome state case which strongly holds that California penal law is exclusively territorial (People v. Buffum, 40 Cal.2d. 709,

256 P.2d. 317 [1953]), the California Supreme Court performed an incredible feat of judicial footwork. The court said, in Part 3 of its opinion (Appendix E-28):

> "Buffum is inapplicable. The completed violations in the case before us occurred well within the state boundaries as defined by our state Constitution and statutes . . . These are the limits to which the Legislature implicitly intended to extend California's criminal laws, including Fish and Game Code section 2000. . . ." (People v. Weeren and Jennings, 26 Cal.3d. 654, 669, 670, 163 Cal.Rptr. 255, 263, 607 P.2d. 1279, 1287, [1980], Appendix E-29).

The California Supreme Court, in Part 1 of its opinion (Appendix E-5 to E-21) set forth the reasons why it reluctantly had to concede that California had to end where the United States did. In Part 3 of the opinion, the court says that because the state legislature was mistaken as to the boundaries, if acts occur in the "mistake area," then it is proper for the state to regulate extraterritorially

despite its own law, (Buffum, supra.) which says it can't. This proposition makes the scope of criminal law dependent upon the mistaken subjective implied intent of an ancient legislature. This violates due process of law under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

This is the first case involving the Fishery Conservation and Management Act of 1976 to reach this court. This case presents a very clear example of the problems inherent in a state's regulations outside its boundaries within an area of exclusive federal concern. This issue is now ripe for review. Since a resolution of the collision between federal and state authority must, soon, be made, this case, with its extensive lower appellate treatment by outstanding lower courts, is the best possible case to serve as a vehicle for such a resolution.

For these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Attorneys for Petitioners

APPENDIX A

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA
APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff/Respondent,

v.

HANS H.H. WEEREN, STEVEN
C. JENNINGS and RONALD
K. TEGLAND,

Defendants/Appellants.

NO. APP 824

(Municipal Court No. A024648)

JUDGMENT

(On appeal from the Municipal
Court of Ventura County,
Oxnard Department)

The above-entitled cause having been fully argued, submitted and taken under advisement, IT IS ADJUDGED that

THE JUDGMENT OF THE MUNICIPAL COURT BE AND HEREBY IS REVERSED.

MARVIN H. LEWIS
Presiding Judge of the
Superior Court
Appellate Department

RICHARD C. HEATON
Judge of the Superior Court
Appellate Department

ROBERT L. SHAW
Judge of the Superior Court
Appellate Department

DATED: October 23, 1978

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
APPELLATE DEPARTMENT
FOR THE COUNTY OF VENTURA

PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff/Respondent,

v.

HANS H.H. WEEREN, STEVEN
C. JENNINGS and RONALD
K. TEGLAND,

Defendants/Appellants.

NO. APP 824

OPINION

APPEAL from the Municipal Court of Ventura County, Edwin M. Osborne, Judge. Reversed.

Cohen, England, Whitfield & Osborne by Robert A. McSorley for Defendants and Appellants.

C. Stanley Trom, District Attorney by Gary W. Norris, Deputy District

Attorney, and Evelle J. Younger, Attorney General by Andrew D. Amerson, Deputy Attorney General, for Plaintiff and Respondent.

Defendants were charged in a two count complaint with having committed the crime of violation of section 2000 of the Fish and Game Code in that they allegedly took a swordfish while operating under a swordfish permit and being directly assisted by an aircraft in violation of Title 14, California Administrative Code, section 107(g)(2). Count I charged Defendants, Weeren and Tegland, with having committed this offense on September 24, 1977 and Count II charged Defendants, Weeren and Jennings, with having committed this offense on September 28, 1977. A jury found defendants, Weeren and Jennings, guilty as to Count II. Defendants Weeren and Tegland, were acquitted of the charge in Count I. Defendants' appeal from the judgment of conviction and from various forfeiture orders related to the proceeds of the fish taken, the fishing boat and certain radio

equipment (all of which was apparently owned by Tegland).

Defendants contend: (1) The State of California lacks subject matter jurisdiction since the area at which the swordfish was caught was more than three miles from the mainland or any of the Channel Islands; (2) The evidence was insufficient to support a finding that venue would lie within the County of Ventura; and (3) The trial court lacked jursidiction to order the forfeiture. We have concluded that contention (1) requires reversal and that hence, contentions (2) and (3) need not be discussed.

It is clear from the record that the fish were taken 10 miles off Anacapa Island and that the evidence was sufficient to support the finding that an aircraft was used to directly assist in that taking. The question is whether these acts occurred within the State of California, or, if not, whether there is some other basis for concluding that California law was nevertheless violated in a manner that would subject the

alleged violators to prosecution in this State.

The problem restated is the basic one of criminal jurisdiction over an offense or purported offense.

Jurisdiction is, of course, a term of multiple meanings, which, of necessity, must be classified and distinguished in terms of the different kinds which may be involved in criminal proceedings. What we are concerned with here is jurisdiction of the subject matter as related to the power of a state to prosecute for crimes. The issue may well require further delineation as between legislative power and judicial power and, unfortunately, there seems to be a tendency in the various authorities to verbally confuse the two. As noted by Witkin in section 38 of the Jurisdiction and Venue chapter of his text, California Criminal Procedure (1963):

> "The power or 'jurisdiction' of the state of regulate conduct of individuals and to prohibit criminal activities is exercised by its

legislative branch, by statute, defines crimes and prescribes punishment; the judicial branch applies the statutory rules to individuals charged with crime. Both are exercising 'jurisdiction'." (Citations)

". . . The first class of cases involves a challenge to 'jurisdiction', which, on analysis, does not attack the competency of the Court to try the defendant if the statute is valid. The challenge is rather to the power of the state to regulate the conduct in question, i.e., to the constitutionality of the statute. And where the objection is that it operates extraterritorially, there is a tendency (as we have noted) to verbally confuse the legislative power of the state to regulate any conduct in the area with the judicial power of the Court to apply the statute to the activities of the defendants."

". . . If the statute defines a crime in sufficiently certain terms, and by express languate or implication or construction is applicable only to the prohibited activities within the state, and does not infringe constitutional guaranties or operate in a field

preempted by federal law, legislative power is properly exercised; i.e., there is legislative jurisdiction, and the statute is valid. But a court . . . which seeks to apply the statute to activities of a defendant which occurred wholly outside the territorial jurisdiction of the state, lacks judicial jurisdiction of the subject matter and its judgment is void."

And continuing in section 39:

"Judicial jurisdiction may be absent if the criminal act or omission took place outside the territorial boundaries of the state. If the criminal statute itself purported to apply extraterritorially it would be void for lack of legislative jurisdiction . . .; and if the Court attempts to apply a valid statute to extraterritorial activities beyond the power of the state to control, it is acting without judicial jurisdiction.:

What we get from all of this is that on essentially the same facts, depending on the statute in question and its construction, a given case may fall in one or the other catagories.

It is perhaps because of this that

the various cases cited to us are so difficult to evaluate or, in many instances, to reconcile. In all candor, our attempts have in large part failed. What we have attempted to do then, is to avoid the temptation to simply recite and repeat the voluminous cases called to our attention, select the one (or more) that seems best suited to a particular result and use that as the justification for our decision. Rather, it has been our aim to more or less start fresh in a common sense fashion as relates to the basic questions which seem to be required under the fundamental law discussed by Mr. Witkin and referred to hereinabove.

First, are the statutes in question designed to proscribe conduct within the territorial limits of the State of California? Second, what are the territorial limits of the State of California? And, third, where factually did the conduct take place in the case at bench that might subject the defendants to criminal liability in this State?

Since it seems obvious that a state may not punish acts occurring outside the state, which are legal where they are done (as will be discussed further hereinafter), and since the statute in question does not purport in any fashion to do otherwise, we have concluded that the first question must be answered in the affirmative. Support for this conclusion is readily found in section 27 of the Penal Code which provides, in pertinent part, "The following persons are liable to punishment under the laws of this state: 1. All persons who commit, in whole or in part, any crime within this state" (emphasis added); and People vs. Buffam, [sic] 40 Cal.2d. 709 (1953) wherein the California Supreme Court endorsed the general principle that, ordinarily, a state does not impose punishment for acts done outside its territory, and that where a statute makes no reference to the place of performance of the prohibited act it will be assumed that the Legislature did not intend to regulate conduct taking place outside the

borders of the State. In short, as said by Mr. Justice Holmes in American Banana Co. vs. United Fruit Co., infra, " 'All legislation is prima facie territorial' ", and we have found nothing to lead us to a contrary conclusion as to the Statute and Regulation here involved.

As to the second question, we are persuaded to the view as outlined in defendants' briefs concerning the traditional three-mile limit. The State Constitution, Article XXI, Section 1, sets forth this boundary and we find still further confirmation in the cases of Ex parte Marincovitch, 48 Cal.App. 474 (1920), Bayside Fish Flour Co. vs. Gentry, 297 U.S. 522, 56 S.Ct. 513, 80 L.Ed. 772 (1936), and most importantly, United States vs. California, 381 U.S. 139, 85 S.Ct. 1401, 14 L.Ed. 2d. 296 (1965). We find ourselves in full agreement with defendants' criticism of the cases relied upon by respondent for its contrary assertion as to the spot in the ocean where the fishing activities here under review admittedly

took place.

All of which brings us to probably the most interesting question in the case. The People argue that, regardless of the territorial limits of the state, the acts here in question constituted a California crime because of the state's sovereign authority over the acts of its citizens adversely affecting the state and the provisions of Penal Code Section 778a. This section provides:

> "Whenever a person, with intent to commit a crime, does any act within this State in execution of such intent, which culminates in the commission of a crime, either within or without this State, such person is punishable for such crime in this State in the same manner as if the same had been committed entirely within this State."

While at first blush there would seem to be some merit to the respondent's position, on analysis, its broad application could well lead to some absurd consequences. It is elementary, we believe, that one must first

determine if the act is lawful where is is done.

"(T)he general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done". American Banana Co. vs. United Fruit Co., 213 U.S. 347, 356, 29 S.Ct. 511, 512 (1909). And further from this same case at the same page, "It is fundamental that jurisdiction in criminal matters rests solely in the courts of the state or country in which the crime is committed. . . . The nationality or citizenship of the offender is immaterial."

Granting that California may punish conspiracies to commit crimes and attempts to commit crimes, the object of the agreement and the overt act towards its consumation on the one hand or the acts constituting the attempt on the other can only in themselves be crimes if the objective is unlawful. To hold otherwise could result in the anomolous, [sic] startling and wholly untenable conclusion exampled in defendants'

brief of a Californian going to Nevada to gamble and thereby by some stretch of logic committing a California crime. A careful reading of the statute (778a) makes it clear that the Legislature never intended to provide otherwise. The section requires an act within this state and the intent to commit a crime. If what is intended is not criminal because it is perfectly legal where it was both contemplated to be and in fact done, the otherwise innocent acts in this state, no matter how extensive, cannot be converted into crimes. If, of course, the intent is to do that which is criminal and the other requisite elements for either a conspiracy or an attempt can be shown to exist, we obviously have a horse of a different color. It is in this latter category that we can place the holding in People vs. Buffum, 40 Cal.2d. 709 (1953) and understand the results in People vs. Utter, 24 C.A.3d. 535 (1972) and People vs. Mac Donald, 24 C.A.2d. (1938). Or, we might have a statute which prohibits leaving the state with intent to do

what is therein prohibited and have a valid conviction under such a statute even if what was ultimately done was lawful where done, but this would be within the territorial principle and supportable because the very intent of the enactment is to punish the inhabitant for leaving the state to do what is prohibited within the state. See Perkins, The Territorial Principle in Criminal Law, 22 Hast. L.J. 1155, 1165-1166 (1971). To our way of thinking, neither Fish and Game Code section 2000 nor Administrative Code Section 107(g)(2) are such statutes.

As relates to the case at bench, the acts of taking the fish occurred in their entirety outside the state and there was nothing to show that the defendants by their acts within the state intended to do otherwise. We conclude, therefore, that the respondent's citizenship - nationality - conspiracy - attempt - contact argument must fail and that the judgments appealed from should be and are reversed.

Dated: October 23, 1978.

MARVIN H. LEWIS
Presiding Judge of the
Superior Court
Appellate Department

We concur:

RICHARD C. HEATON
Judge of the Superior Court
Appellate Department

ROBERT L. SHAW
Judge of the Superior Court
Appellate Department

APPENDIX B

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA
APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and
Respondent,

v.

HANS H.H. WEEREN, STEVEN
C. JENNINGS and RONALD K.
TEGLAND,

Defendants and
Appellants.

NO. APP 824

CERTIFICATION OF TRANSFER
OF CASE TO COURT OF APPEAL

Pursuant to Rule 63, California Rules of Court, this court certifies the transfer of the encaptioned case to the Court of Appeal.

This transfer is necessary in order to secure uniformity of decision, for People v. Foretich, 14 Cal.App.3d.

Supp.6, 14, holds that California may enforce its fishing laws even beyond three miles from shore, and further, that Congress did not preempt state fishing laws by establishing a fishery conservation zone where no federal regulations had as yet issued.

This transfer is also necessary in order to settle an important question of law, whether the Municipal Court of Ventura County had subject matter jurisdiction to try defendant commercial fishermen for illegally taking a swordfish with aircraft assistance in violation of Fish and Game Code section 2000 and Title 14, California Administrative Code, section 107(g)(2), based on the offense's occurring within the geographic limits of the State of California and of Ventura County or based on some other ground for finding that criminal jurisdiction existed, where the fish was harpooned in the Santa Barbara Channel more than three miles from the Californian mainland and any island.

On October 23, 1978, this court adjudged that the judgment of the

municipal court finding defendants guilty be reversed. The court filed a written opinion which was not certified for publication.

The Clerk of the Court is directed to prepare a certified copy of this certification for forwarding to the Court of Appeal, Second Appellate District in accordance with California Rules of Court, Rule 63(f).

_____
MARVIN H. LEWIS,
Presiding Judge of the
Superior Court, Appellate
Department

_____
RICHARD C. HEATON,
Judge of the Superior Court
Appellate Department

_____
ROBERT L. SHAW,
Judge of the Superior Court
Appellate Department

DATED: _____

APPENDIX C

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
IN THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

HANS H.H. WEEREN, STEVEN C. JENNINGS,

Defendants and Appellants.

---

2 Crim. No. 33706

(Ventura County)
(Super.Ct. No. App. 824)

(Muni.Ct. Oxnard Muni.)
(Dist. Nos. A-024647)
A-024648)

Appellant Weeren and one Ronald Tegland were charged in count 1 of a misdemeanor complaint with violating section 2000 of the Fish and Game Code

by taking broadbill swordfish on September 24, 1977, with the assistance of a spotter aircraft in violation of 14 California Administrative Code section 107. Weeren and appellant Jennings were charged in count 2 with committing a like offense on September 28, 1977. A jury returned a not guilty verdict as to count 1 and a guilty verdict as to count 2. Appellants were fined and placed on summary probation for 36 months conditioned upon their serving brief jail sentences. The vessel "Comanche," upon which the offense occurred and which was owned by Tegland, was ordered forfeited. Forfeiture of the boat was suspended upon certain conditions including forfeiture of all the aviation radio equipment which was aboard the Comanche on September 28, 1977. The matter was transferred to this court upon certification by the Appellate Department of the Ventura County Superior Court. (Cal. Rules of Court, rules 62, 63.)

It is undisputed that the acts described in count 2 took place in the Santa Barbara Channel at a point more

than three miles off shore and some ten miles south-southeast of Anacapa Island. Department of Fish and Game officials boarded the Comanche at that location, determined that two broadbill swordfish had been caught by appellant with aircraft spotter assistance at that approximate location, decided at that time to seize the swordfish, and remained aboard the Comanche as she proceeded to Channel Island Harbor where the two swordfish were actually seized.

Section 2000 of the Fish and Game Code provides: "It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or regulations made pursuant thereto. Possession of a bird, mammal, fish or reptile or parts thereof in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment is prima facie evidence the possessor took the bird, mammal, fish or reptile or parts thereof."

Appellants contend that the acts described in count 2 took place on the

high seas, outside the territorial waters of this state and that California is therefore without jurisdiction to prosecute the offense. The People contend that the Santa Barbara Channel constitutes California territorial water. They rely upon sections 170 to 172 of the Government Code. We are not the first court called upon to determine this state's coastal boundaries. As the history which follows will show, the issue was definitely decided by the United States Supreme Court in 1965. (United States v. California, 381 U.S. 139.)

California's boundaries were first defined in article XII, section 1 of the California Constitution of 1849 which fixed the coastal boundary as: "Thence running west . . . to the Pacific Ocean and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitute to the

place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast." This definition was readopted without substantial change as article XXI, section 1, of the California Constitution of 1879.[1/] (People v. Stralla, 14 Cal.2d. 617.)

In 1945, the United States brought suit against California to determine title to the submerged lands and mineral rights in the three mile sea belt off the California coast. The crucial issue at stake in that litigation was ownership of tidelands oil resources. A decision favorable to the federal government was rendered (United States v. California (1947) 332 U.S. 19), which resulted in issuance of the following order and decree:

"The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in

1/ Article XXI was repealed November 7, 1972 and replaced by article III, section 2 which provides: "The boundaries of the State are those stated in the Constitution of 1849 as modified by Statute."

and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles. . . . The State of California has no title thereto or property interest therein." (United States v. California, 332 U.S. 804.805. Emphasis added.)

The United States requested the Supreme Court to define in greater detail the status of certain areas which California claimed were inland waters. That court appointed a Special Master to undertake the task, directing him to consider seven particular segments of the California coast, including the segment from Point Conception to Point Hueneme, and further directed him to determine whether particular channels between the mainland and offshore islands were inland waters or open seas. (United States v. California, supra, (381 U.S. 139, 142-143, fn. 3.)

The California Legislature, in

1949, in order to strengthen the state's claims as to what constituted inland waters in the context of the continuing litigation between the state and the federal government, enacted Government Code sections 170 to 172.[2/]

2/ "§ 170. Coastal Boundary. To give greater precision to the boundary of the State of California as defined in Article XXI of the Constitution, it is hereby declared that the part of the boundary which is described as "running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude," and as "including all the islands, harbors, and bays along and adjacent to the coast," runs and has in the past run three English nautical miles oceanward of lines drawn along the outer sides of the outermost of the islands, reefs and rocks along and adjacent to the mainland and across intervening waters; and where there are harbors, but no such outlying islands, reefs and rocks, it runs and in the past has run three English

nautical miles oceanward of lines drawn in front of the harbors along the outermost works and installations thereof, and in the case of all bays (including inlets and estuaries) three English nautical miles from lines drawn from headland to headland across the mouth of each bay, inlet and estuary, regardless of the length of the lines.

"Where there are no outlying islands, reefs or rocks and no harbors or bays or inlets or estuaries, the boundary runs and has in the past run three English naturical miles oceanward of the lowerst low-water mark on the shore. (Added Stats. 1949, c.65, p.82, §1.)"

"§ 171. Inland Waters. All waters between the mainland and the outermost of the islands, reefs and rocks along and adjacent to the coast of the State of California from which the boundary of the State is measured, and all waters between the islands, reefs and rocks themselves, are delcared to be and to have been in the past inland waters of the State. Similarly, all waters within

the lines around harbors and across bays, from which the boundary of the State is measured, are declared to be and to have been in the past inland waters of the State. These waters are "waters thereof" within the meaning of that phrase in Section 25 of Article I of the Constitution. (Added Stats. 1949, c.65, p.82, §2.)"

"§ 172. Navigable Waters. The reference in Section 1 of Article XV of the Constitution to "the navigable waters of this State," the reference in Section 2 of the same article to "a harbor, bay, inlet, estuary, or other nagigable water in this State," and the reference in Section 3 of the same article to "the waters of any harbor, estuary, bay or inlet used for the purposes of navigation," are delcared to include and to have included in the past all of the waters within lines drawn from headland to headland across the mouth of each of the bays, inlets and estuaries along the coast of the mainland and along the coast of and across the waters between the islands of the

State, regardless of the length of such lines, such waters being inland waters of the State. (Added Stats. 1949, c.65, p.82, §3.)"

The area claimed by the State in Government Code sections 170 to 172 is depicted in the map attached hereto as Appendix A.

The Special Master filed his report with the Supreme Court in 1952. In 1953, before the Supreme Court took any action with respect to the report, Congress enacted the Submerged Lands Act. (67 Stat. 29, 43 U.S.C. §§1301-1315 (1958 ed.).) Section 3(a) of that Act granted to the states "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States." (Emphasis added.) Section 2(b) of the Act provided:

"The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending

from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."

Section 2(c) provided: "The term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. . . ."

The term "inland waters" was not defined in the Act. The Supreme Court undertook to define it in United States v. California, supra, 381 U.S. 139, the sequel, as it were, to United States v. California, supra, 332 U.S. 19.[3/]

3/ Passage of the Submerged Lands Act of 1953 provided a complete, but temporary, solution to the tidelands oil issue, as technology in 1953 had not progressed to a point which made it practical to drill for oil more than three miles off the California coast. By 1963, improved drilling techniques had revitalized interest in defining the demarcation line of California's inland waters. The United States filed an amended complaint which roused the pending litigation from its dormant state and resulted in the

Supreme Court's 1965 decision. (United States v. California, supra, 381 U.S. 139, 148-149.)

The Court found that it was the plain intent of Congress, in passing the Submerged Lands Act, to leave the courts the task of determining what constituted inland waters, "independently of the Submerged Lands Act." (381 U.S. at p. 151.) "It intended to leave unaffected the judicial view of inland waters and the judicial responsibility for particularizing it." (381 U.S. at p. 152.)

Thus it is clear that, contrary to the People's position herein, the definition of inland waters and demarcation of California's boundaries which were adopted by the Supreme Court in United States v. California, supra, 381 U.S. 139, are applicable in a far wider context that the Submerged Lands Act.4/

4/ In People v. Foretich, 14 Cal.App.3d. Supp. 6, 10, the Appellate Department of the Los Angeles County Superior Court agreed with the People's contention that United States v. California, 381 U.S. 139, merely determined property rights and did not fix the outer limits of the state's boundaries. It was disagreement with this holding that caused the Appellate Department of Ventura County Superior Court to certify the present

matter to us. To the extent that Foretich, supra, is inconsistent with the views expressed herein, it is disapproved.

This conclusion is reinforced by the nature of the particular definition adopted by the court, namely that the meaning of the term "inland waters" in the Submerged Lands Act should conform to the definition of that term in the Convention of the Territorial Sea and the Contiguous Zone,[5/] thereby establishing "a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations. . . ." (381 U.S. at p. 165.) Justification for this decision is found in the following statement:

"The national responsibility for conducting our international relations obviously must be accomodated with the legitimate interests of the States in the territory over which they are sovereign. Thus a contraction of a State's

5/ Ratified by the United States on March 24, 1961, the Convention became effective September 10, 1964, when ratified by the requisite number of nations. (United States v. California, supra, 381 U.S. 139, 163-164.)

recognized territory imposed by the Federal Government in the name of foreign policy would be highly questionable. But an extension of state sovereignty to an international area by claiming it as inland water would necessarily also extend national sovereignty, and unless the Federal Government's responsibility for questions of external sovereignty is hollow, it must have the power to prevent States from so enlarging themselves." (381 U.S. at p. 168.)

Article 4 of the Convention on the Territorial Sea and the Contiguous Zone permits the nations which subscribe to it to fix their seaward boundaries "if there is a fringe of islands along the coast in its immediate vicinity," so as to include the waters between the coast and such islands by drawing boundary lines in the fashion shown in the map in Appendix A. The lines so drawn are denominated "straight base lines." But the choice of adopting the straight base line method rests, under the Convention, with the nation and not with its

component states. (United States v. California, supra, 381 U.S. 139, 167-168.) The United States chose not to extend this nation's boundaries by utilizing straight base lines; therefore, California cannot do so. California also sought to have the Santa Barbara Channel classified as inland waters by treating it as a "fictitious bay." The court rejected this notion, stating:

"The united States has not in the past claimed the Santa Barbara Channel as inland water and opposes any such claim now. The channel has not been regarded as a bay either historically or geographically. In these circumstances, as with the drawing of straight base lines, we hold that if the United States does not choose to employ the concept of 'fictitous bay' in order to extend our international baoundaries around the islands framing Santa Barbara Channel, it cannot be forced to do so by California." (381 U.S. at p. 172.)

The court adopted the recommendations of the Special Master with respect

to the status of the Santa Barbara Channel which were as follows: "The channels and other water areas between the mainland and the offshore islands within the area referred to by California as the 'over-all unit area' are not inland waters. They lie seaward of the baseline of the marginal belt of territorial waters, which should be measured in each instance along the shore of the adjoining mainland or island, each island having its own marginal belt." (381 U.S. at p. 144, fn. 6.)

In a supplemental decree issued in United States v. California the court decreed: "The following are not historic inland waters, and do not comprise inland waters except [for the three mile belt]:

"(a) Waters between the Santa Barbara or Channel Islands, or between those islands and the mainland;

"(b) Waters adjacent to the coast between Point Conception and Point Hueneme. . ." (382 U.S. 448, 452.) We are therefore compelled to conclude that the acts described in count 2 of

the present complaint took place on the high seas, not within California's territorial waters.

The People contend that the conviction may nonetheless stand because California may exercise jursidiction over its citizens on the high seas. (Skiriotes v. Florida (1941) 313 U.S. 69.) In Skiriotes the Supreme Court upheld Florida's prosecution of one of its citizens for improper sponge fishing on the high seas in an area adjacent to Florida's territorial waters. The court declared: "If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress." (313 U.S. at p. 77.) This latter proviso is of course mandated by the Supremacy Clause. (U.S. Const., art. VI.)

In the instant case, California's prosecution of appellants does create a

conflict with an act of Congress.[6/] In 1976 Congress enacted the Fishery Conservation and Management Act. (Pub.L. 94-265, §2, 90 Stat. 331, amended Pub.L. 95-354, §2, Aug. 28, 1978, 92 Stat. 519.) This Act declares that the fish off the coasts of the United States constitute a valuable and renewable natural resource (16 U.S.C. 1801(a)(1)), and that it is the purpose of Congress in passing the Act to take action to conserve and manage the fishery resources off our coasts (16 U.S.C. 1801 (b)(1)). The Act establishes a fishery conservation zone as follows: "There is

6/ Skiriotes v. Florida, Supra, 313 U.S. 69, is also distinguishable from the instant case in that the statute at issue therein prohibited not merely the use of certain fishing and diving equipment, but its maintenance for use as well. The defendant in Skiriotes was thus liable to prosecution for maintaining the forbidden diving equipment in Florida, as well as for using it on the high seas. We express no opinion herein as to California's powers to prohibit maintenance or possession of various types of fishing equipment by its citizens or on vessels registered within this state.

established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminus with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured." (16 U.S.C. 1811.)

The jurisdiction of the states within the fishery conservation zone is circumscribed as follows: "Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State." (16 U.S.C. 1856(a).)

California provides for the

registration of every "undocumented vessel using the waters of this state." (Veh. Code §9850.) An undocumented vessel is defined by Vehicle Code section 9840 as one which "does not have a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto." The Comanche had a United States document. Robert Mahon, a patrol boat lieutenant with the Department of Fish and Game testified that a boat such as the Comanche could have been registered with the state of California. Had it been so registered it would have been issued a "CF" number.7/ The Comanche had no such number. The Comanche's Certificate of Boat Registration (People's Exhibit 4), which was obtained in compliance with sections 7887-7890 of the Fish and Game Code, confirm that the Comanche is of United States, not California registry. In addition to its "United States Document Number," the

7/ Presumably this refers to the registration number provided by Vehicle Code section 9853.1.

Comanche had been issued a boat number by the Department of Fish and Game which was, in effect, a license to fish commercially for swordfish but which in no way altered the Comanche's status as a vessel of the United States. Pursuant to 16 U.S.C. 1856 California therefore could exercise jursidiction over fishing activities on the Comanche only while the ship was within the state's territorial waters. Since the offense herein occurred on the high seas, the conviction must be reversed.

The prohibition in 16 U.S.C. 1856 against directly or indirectly regulating fishing by the Comanche outside California's boundaries precludes prosecution of the appellents on the People's alternative theory that appellands' preparatory acts within this state justify California's assertion of jurisdiction over them.

The judgment is reversed.

CERTIFIED FOR PUBLICATION.

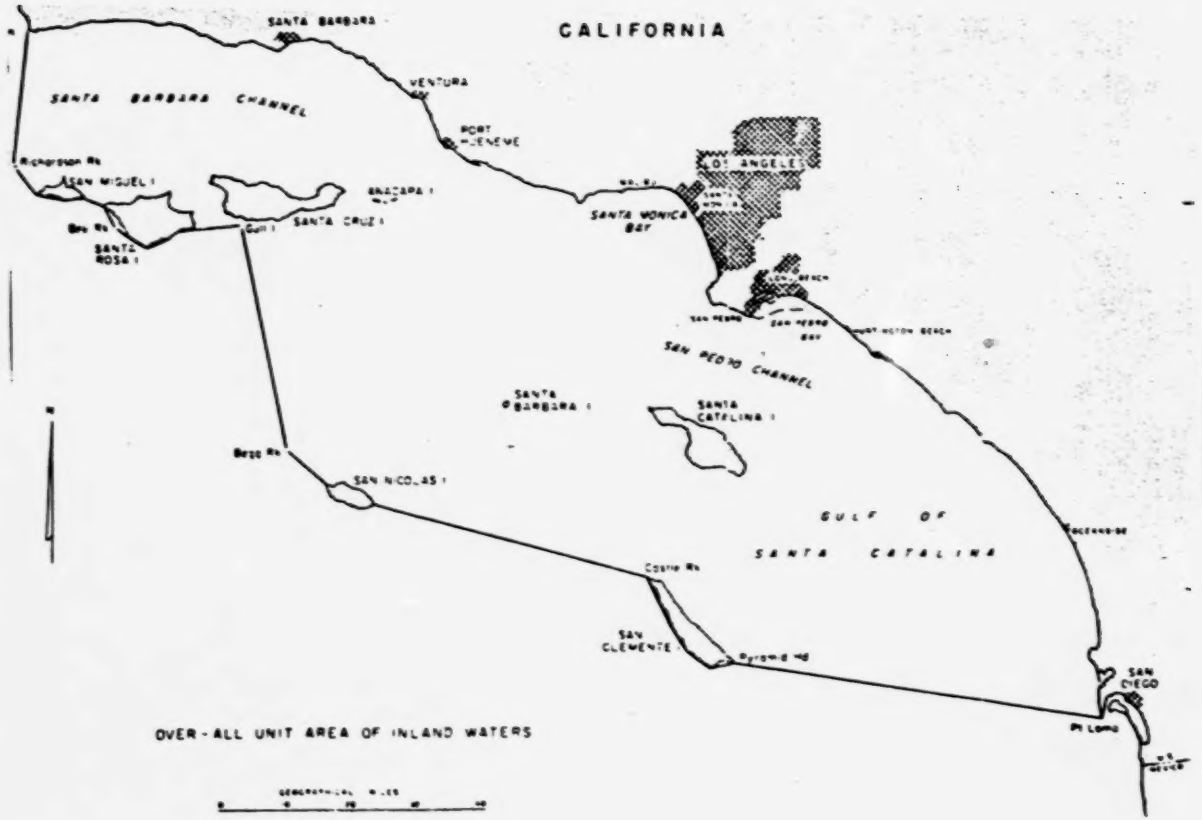
STEPHENS, J.

We concur:

KAUS, P.J.

ASHBY, J.

Cohen, England, Whitfield & Osborne, and Robert A. McSorley, dor Defendants and Appellants.
Evelle J. Younger and George Deukmejian, Attorneys General; Jack R. Winkler, Chief Assistant Attorney General -- Criminal Division; S. Clark Moore, Assistant Attorney General; Norman H. Sokolow, Andrew D. Ammerson, Deputy Attorneys General, for Plaintiff and Respondent.


CALIFORNIA
SANTA BARBARA
VENTURA
SANTA BARBARA CHANNEL
PORT HUENEME
LOS ANGELES
SANTA MONICA BAY
SAN MIGUEL I
SANTA ROSA I
SANTA CRUZ I
SAN PEDRO CHANNEL
SANTA BARBARA I
SANTA CATALINA I
SAN NICOLAS I
GULF OF SANTA CATALINA
SAN CLEMENTE I
SAN DIEGO
OVER-ALL UNIT AREA OF INLAND WATERS

APPENDIX A

APPENDIX D

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

July 25, 1979

I have this day filed Order _____

HEARING GRANTED

CRIM. 21078

In re: 2 Crim. No. 33706
People
vs.
Weeren and Jennings

Respectfully,

G.E. BISHEL,
Clerk

APPENDIX E

PEOPLE V. WEEREN, et al.

Crim. 21078

COUNSEL FOR PARTIES:

FOR APPELLANTS:

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C O P Y

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

HANS H.H. WEEREN et al.,

Defendants and Appellants.

Crim. 21078

(Muni Ct. Nos. A024647
A024648)

Defendants Hans H.H. Weeren and Steven C. Jennings appeal from the judgments of conviction of the misdemeanor violation of Fish and Game Code section 2000, which generally and in relevant part provides: "It is unlawful to take any . . . fish . . . except as provided in this code or regulations made pursuant thereto." The convictions are based on

-- SEE CONCURRING OPINION --

trial court findings that defendants with the use of a spotter aircraft took broadbill swordfish contrary to the regulations of the Fish and Game Department (Cal.Admin. Code, tit. 14, §107, subd. (g)(2)). This regulation specifically mandates that "Broadbill swordfish may not be taken for commercial purposes except by the holder of a revocable permit issued by the department, and as herein provided. . . . (g) Methods of Take. . . . (2) Aircraft may not be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit."

Both of the defendants are citizens and residents of California holding commerical fishing licenses issued by the State of California. Their 19-ton vessel, the Comanche, and the accompanying spotter aircraft, were both based in Oxnard, Ventura County, on California's southern coastline. The Comanche was licensed for commerical fishing for swordfish under Fish and Game Code sections 7880-7890. It carried an appropriate "certificate of boat registration"

and boat registration number required by those statutes. However, because it also was enrolled with a "United States document number," it did not bear the California identification number contemplated by Vehicle Code sections 9840-9860.

On September 28, 1977, California Fish and Game officials boarded the Comanche at a point 10 miles south-southeast of Anacapa Island in waters of the Santa Barbara Channel, situated more than 3 nautical miles from the shore of either the mainland or of any California coastal islands. The officials determined that two swordfish seized on the Comanche had been caught at that location by defendants, with the help of radio communication and directions from a spotter aircraft. The officials remained aboard while the Comanche sailed under their direction to Channel Island Harbor in Ventura County.

We will affirm defendants' convictions on the ground that California, in the protection of its legitimate interests may exercise penal control over its citizens extraterritorially. Furthermore,

because of previous uncertainty and the continuing importance of the issues presented, we examine successively the opposing contentions of the parties as they bear on (1) the nature and location of California's territorial waters as well as (2) the extent of California's extraterritorial penal authority.

1. California's Territorial Waters

Defendants assert that because the precise location of the Comanche when she was boarded was beyond California's boundaries their convictions must fall. In resolving this issue we are aided by general principles and an examination of a series of federal and state constitutional and legislative enactments as well as United States Supreme Court interpretations thereof.

As a general proposition the sea boundaries of a coastal nation or state are traditionally fixed with reference to its "inland waters" and "marginal sea." The outer sea boundary is deemed to be a line which runs parallel to and seaward from the coast, and the zone of water between the land mass and that

line is referred to as the "marginal sea." The landward edge of this marginal sea need not be the precise water's edge at low tide. Where the shoreline is characterized by irregular bays, inlets, and harbors and random nearby islands the waters within these irregular configurations are considered "inland waters" of the nation or state, subject to its sovereignty, dominion and control. (See Gross, The Maritime Boundaries of the States (1966) 64 Mich.L.Rev. 639, 640.)

In seeking to define California's seaward boundary, our first source of authority is federal. The United States Congress, alone, through its power to admit new states, may set state boundaries "as a domestic matter." Such a boundary [is] fully effective as between Nation and State . . .," regardless of contrary state claims or expectations. (United States v. Louisiana (1960) 363 U.S. 1, 35; see United States v. California (1965) 381 U.S. 139, 157 (California II.) Accordingly, when the extent of a state's territorial jurisdiction is relevant to the operation of

federal law, the congressional delineation of state boundaries prevails over conflicting state assertions.

The People of California have purported to describe their own boundaries both constitutionally and legislatively. Both the 1849 and 1879 Constitutions in article XXI, section 1, described the California sea boundary as extending "three English [i.e., nautical] miles" into the Pacific Ocean, running "in a northwesterly direction and following the direction of the Pacific Coast . . . . Also, including all the islands, harbors, and bays along and adjacent to the coast." (Italics added; see present art. III, §2.)

To implement the foregoing constitutional provision the Legislature in 1949 enacted Government Code section 170 which recites: "To give greater precision to the [constitutional description], it is hereby declared that the [sea] . . . boundary . . . runs and has in the past run three English nautical miles oceanward of lines drawn along the outer sides of the outermost of the islands, reefs,

and rocks along and adjacent to the mainland and across intervening waters; . . ." (Italics added.)

Section 171, in turn, provides that all water between the mainland and the island-encircling lines described in section 170 "are delcared to be and to have been in the past inland waters of the State." (Italics added.) The current article III, section 2, of the Constituion, which was adopted in 1972 to replace the 1849-1879 description, declares that the state's boundaries "are those stated in the Constitution of 1849 as modified pursuant to statute." (Italics added.)

All parties concede that the Santa Barbara Channel, including the position at which the Comanche was boarded, is "inland waters" under the current state constitutional and statury language. Must these state declarations yield to the preeminence of federal legislative and judicial expression?

In 1947, the United States Supreme Court held that the United States, rather than the coastal states, possessed

all ownership rights in offshore lands and resources. (United States v. California (1947) 332 U.S. 19 (California I).) In 1953 Congress responded to California I by adopting the Submerged Lands Act (the Act). (43 U.S.C.A. §1301 et seq.) The Act transferred to the affected individual states title to and management of all lands and resources in or under the navigable waters within their respective "boundaries." (Id., §1311(b)(1).) Furthermore, the "boundaries" of coastal states were therein defined as those which existed at the time of the state's admission into the Union or which were thereafter approved by Congress or established by the Act itself. In conformity with the then traditional federal view of international sea limits, the 1953 law "approved and confirmed" the "boundaries" of each coastal state as terminating three geographical (nautical) miles seaward from the coast. State claims beyond the three-mile limit were foreclosed except for the assertions by certain southern

states that their previously ratified "boundaries" extended nine miles into the Gulf of Mexico. (Id., §§1301(b), 1312.)

The three- or nine-mile zone described in the Act is measured from the nation's "coast line," (ibid.) which is defined as the line of ordinary low water mark where the coast "is in direct contact with the open sea," otherwise, as "the line marking the seaward limit of inland waters." (Id., §1301(c).) Accordingly, a state's inland waters lie entirely within its "boundaries."

In 1965, in California II, supra, the high court again spoke definitively and specifically on the subject before us, rejecting broad-based arguments that Santa Barbara Channel constituted inland waters of California under the Act. In holding that the statute left the definition of inland waters to the courts, free of any subjective state expectations (Id., at. pp. 150-152), the California II majority adopted, for convenience, the definition then used internationally by the executive branch

of the federal government under the Convention on the Territorial Sea and the Contiguous Zone (15 U.S.T. 1606 (1964)), to which the nation is a signatory. The Convention formula, as applied by the national executive branch in foreign relations, restricts inland waters to certain geographical harbors and bays encircled by a single land mass. (Id., at pp. 169-170; see Convention, art. VII.)

The California II opinion also specifically disposed of contentions that the 1849 California Constitution established a "historic" boundary outside the coastal islands ratified by Congress in the Act of Admission (9 Stat. 452 (1850)) and again in the 1953 law. (381 U.S. at pp. 172-175.) Under the clear holding of California II, the state's territorial claims in Santa Barbara Channel are confined to three-mile belts seaward from the mainland and around the perimeter of each of the islands in the channel. (The Comanche was not within any of these belts when it was boarded.)

Furthermore, the foregoing result is unaffected by the adoption of the Fishery Conservation and Management Act of 1976 (FCMA) (Pub.L.No. 94-265; 16 U.S.C.A. §1801 et seq.), in which Congress asserted "exclusive" United States fishing management jursidiction over a sea zone beyond state "boundaries" and extending 200 miles seaward from our nation's coastline. (Id., §§1811, 1812.) The several states retain jurisdiction over fishing within their "boundaries," but may not "directly or indirectly" regulate fishing outside those "boundaries," except in certain circumstances. (Id., §1856(a).) Under the FCMA, the precise location of state "boundaries" for purposes of that law is of central importance "as between Nation and State."

We are unable to accept the People's argument that the effect of California II is limited solely to issues involving land title which are governed by the Act and that the high court's holding, accordingly, is therefore inapplicable to California's political

and penal jurisdiction over adjacent seas. Fairly read, California II established the state's "boundaries" for all purposes, political and proprietary, "as between Nation and State." Accordingly, these "boundaries" are those "boundaries" referred to in the FCMA as the limits of state territorial jurisdiction over fishing, and our reasons for so concluding are several.

First, the legislative history of the Act indicates a congressional assumption that it was transferring title to undersea resources within the states' political boundaries. This history is carefully traced by the high tribunal in United States v. Louisiana, supra, 363 U.S.1.

Under long standing case law, the states assumed before 1947 that they owned the natural resources within their territorial waters. (E.g., The Abby Dodge (1912) 223 U.S. 166, 163-175; Manchester v. Massachusetts (1891) 139 U.S. 240, 264; Pollard's Lessee v. Hagan et al. (1845) 44 U.S. (3 How.) 212, 228-229.) California I severely undercut

these expectations in holding that ownership of marginal sea resources was an attribute of federal, not state, sovereignty, regardless of the states' seaward boundaries for political purposes. (332 U.S. 19, 35-36; see Louisiana, supra, 363 U.S. 1, 17.) The holding was somewhat tempered a year later, however, when the Supreme Court confirmed that the states retained jurisdiction to exercise their police power in the three-mile belt of "territorial waters." (Toomer v. Witsell (1948) 344 U.S. 385, 393.)

California I triggered immediate congressional attempts to restore to the states ownership rights in the marginal sea. Virtually all of the "quitclaim" bills introduced after California I framed the grant of title with reference to state "boundaries." "This framework was employed because the sponsors understood this Court to have established, prior to the California decision, a rule of state ownership itself defined in terms of state territorial boundaries . . . ."

(Louisiana, supra, 363 U.S. at pp. 19-20, italics added.)

The need for specific "boundary" terminology was the subject of spirited congressional debate prior to adoption of the Act. Because many states had no expressly defined sea boundaries, either by direct congressional action, or under state Constitutions ratified by Congress at the time of admission, it was therefore urged that submerged proprietary rights should not depend on proof of state boundaries, and that a quitclaim statute should not refer to them. The executive branch, on the other hand, stressed the effect of the California I holding that political boundaries, even if they included the marginal sea, did not carry land or resources ownership rights. (Id. at pp. 20-24.)

These differing views were resolved by a two-step approach. The Act first definitely established the states' minimum seaward "boundaries," without prejudice to subsequent and greater state claims based on prior congressional

ratification or approval. (43 U.S.C.A. §§1301(b), 1312.) It then tied the statutory grant of title to the "boundaries" thus established. (Id. §1311; Louisiana, supra, 363 U.S. at pp. 21-24.) Implicit in this approach was the principle that each state had a single, fixed seaward boundary for all domestic purposes, political and proprietary. (See Gross, supra, 64 Mich. L.Rev. 639, 642, 665, 670; but see Alexander, The Law of the Sea (1967) p. 238.)

The People's narrow reading of California II must be rejected for a second reason. The California II court, within a context which is broader than the Act, rejected the precise argument of the People before us. As here, the state claimed in California II that its original Constitution, ratified by Congress in the Act of Admission, had established an "historic" boundary beyond the coastal islands. The high court, however, found that the state constitutional language was ambiguous, and that California's interpretation was

actually contradicted by the statutory boundary descriptions for certain of the state's coastal counties. (381 U.S. at p. 174.) Under these circumstances, in the high court's view the Legislature's unilateral effort, after the event as it were, to clarify the early constitutional description by statute could add no force to the People's claim.

Finally, the relationship of the term "boundaries" in the Act and in FMCA becomes clear when the two enactments are read together. The 1953 law granted the states, within their "boundaries," not only title to lands beneath sea waters, but "the right and power to manage, administer, develop, and use" the resources "within such lands and waters" where not in conflict with federal regulation. (43 U.S.C.A. §§ 1311(a)(2), 1314(a).) Specifically, for our purposes, the high court has subsequently interpreted the quoted language as giving the states a concurrent right, using their police power, to control the taking of free-swimming fish within their territories. (Douglas v. Seacoast

Products, Inc. (1977) 431 U.S. 265, 283-285.)

The FCMA, on the other hand, asserts almost exclusive federal control over offshore fisheries insofar as compatible with the states' rights. By providing that it shall not be construed as "extending or diminishing" a state's authority "within its boundaries," the FCMA leaves, unimpaired, the states with such fishery rights which they either acquired under the Act, or otherwise possessed. FCMA makes clear, however, that, for most purposes, such rights do not extend beyond those "boundaries." (16 U.S.C.A. §1856(a).) We think it clear that the congressional intent was that the term "boundaries," as used in the 1953 Act and in the 1976 FCMA, should bear the same meaning and receive similar interpretation.

Our conclusion that California II necessarily defined the state's inland waters for all national purposes conforms with prior federal decisions, which have consistently held or assumed that, for purposes of federal

law, California's territorial claims in the coastal channels and straits are limited to three-mile belts off the mainland shore and surrounding the coastal inlands. (Wilmington Transp. Co. v. Cal. R.R. Comm. (1915) 236 U.S. 151, 152 [Santa Catalina Channel is the "high seas" for purposes of federal economic regulation]; Hooker v. Raytheon Company (S.D.Cal. 1962) 212 F.Supp. 687, 693-694 [Santa Barbara Channel is the "high seas" under federal Death on the High Seas Act, despite the provisions of Gov.Code. §§170-171].) Such consistent interpretation of California II also reduces confusion in a complex area by establishing a uniform, precise boundary for all domestic federal purposes. (Cf., California II, 381 U.S. at p. 165; Gross, supra, 64 Mich. L.Rev. 639, 670.)

The People argue that we have previously extended California's inland waters for purposes of criminal jurisdiction beyond those set by California II. People v. Stralla (1939) 14 Cal.2d. 617, is cited for the proposition,

contrary to California II, that Santa Monica Bay is entirely within California territory for purposes of enforcement of the state's gambling laws. Pp. 632-633; compare California II, 381 U.S. at pp. 173-175.) In Stralla, however, no conflict between state and federal or international law was presented. Indeed, the United States there appeared as amicus ciriae in support of California's efforts to end offshore gambling. (14 Cal.2d. at p. 619.)

Here, consistent with the high court's conclusion in California II, we determine only that Santa Barbara Channel is outside California's boundaries for purposes of federal law, and that California's boundaries are those which are established under the Act as interpreted in California II. The channel is thereby excluded from California's boundaries. It follows that when defendants committed the acts for which they were convicted, they were not within California's inland waters. To the limited extent with which it conflicts with these conclusions we

disapprove People v. Foretich (1970) 14 Cal.App.3d. Supp. 6.

II. Extraterritorial Regulation Under Federal Law

We agree with the People's assertion that federal law does not prohibit California's assertion of penal jurisdiction over defendants even though at the time of their commission of the charged offenses they acted outside of California's territorial limits as defined for federal purposes.

The United States Supreme Court has held that in matters affecting its legitimate interests a state may regulate the conduct of its citizens upon the high seas where no conflict with federal law is presented. (Skiriotes v. Florida (1941) 313 U.S. 69, 77.) More specifically, the court recognized that a state's interests in preserving nearby fisheries is sufficiently strong to permit such extraterritorial enforcement of its laws enacted for that purpose. (Skiriotes, supra, at p. 75; Felton v. Hodges (5th Cir. 1967) 374 F.2d. 337, 339; State v. Bundrant (Alaska 1976)

546 P.2d. 530, 550-554; see United States v. Alaska (1975) 422 U.S. 184, 198-199.)

It seems obvious that by adoption and enforcement of its control regulations California seeks to prevent the depletion of a very valuable natural resource. Fish swim. By their very nature they move freely across those arbitrary boundaries which are enacted by governmental entities for official purposes. The commercial and recreational value of California's fisheries are self-evident and are developed, both quantitatively and in their financial aspects, in the record before us. We have no difficulty in discerning in the preservation of its valuable fish population the requisite state interest for extraterritorial enforcement. Furthermore, the state laws here at issue present no conflict with federal swordfish policies because no rules in that field have as yet been promulgated under the FCMA.

The record in this case is favorable to the penal reach of California law.

Consistent with the Skiriotes rationale we observe that defendants are California citizens and residents. Both the Comanche and the spotter aircraft were based in California. California facilities were intended for use in both the landing and selling of their catch. California's interest in defendants' activities was both real and continuing.

Defendants assert, however, that their convictions are invalid because the FCMA expressly forbids extra-territorial fishing regulation by a state, except in cases where the fishing vessel is "registered under the laws of such State." (16 U.S.C.A. §1856(a).) Was the Comanche so "registered"?

Both federal and state governments provide various means of identifying and classifying those craft which move in the nation's navigable waters. Under federal law all domestic vessels over five net tons are subject to federal classification. "Registration" is an ancient term of art under the federal scheme, reserved solely for ships which

are engaged in foreign trade. (46 U.S.C. A. §11 et seq.) Those vessels which are engaged in commerical fishing from United States ports, on the other hand, must be "licensed" if over five net tons, and both "licensed" and "enrolled" if over twnety net tons. (Id., §§251-263; 46 C.F.R. §§67.01-1, 67.01-5, 67.01-11, 67.01-13, 67.07-13.) All boats so "documented" are assigned an official number. (Id., §67.11-1.)

The term "enrollment" evidences the national character of the vessel enabling it to procure a license which the craft may be put in order to prevent evasion of federal revenue laws. (Douglas v. Seacoast Products, Inc., supra, 431 U.S. 265, 274-273; Anderson v. Pacific Coast S.S. Co. (1912) 225 U.S. 187, 199.) Possession of a federal fishing license, however, does not preclude the nondiscriminatory state regulation of the licensed vessel's fishing activities. (Douglas, supra, at p. 277; Manchester v. Massachusetts, supra, 139 U.S. 240, 265; Smith v. State of Maryland (1855) 49 U.S. (18 How.)

71, 74.)

California provides two means of vessel classification and numbering; an identification number (Cf number), and a "certificate of boat registration" with "registration plates." (§§ 7880, 7887.) Such "registration," renewable annually upon payment of a fee (§7890), constitutes a state license to use the boat for commercial fishing of a specified kind.

Defendants urge that because the Comanche carried United States documentation, and therefore bore no CF number, it cannot be deemed "registered" in California for purposes of the FCMA. We disagree. In our view, the Comanche's California "registration" for commercial swordfishing purposes permitted California to regulate such activities on the high seas. In our view, a contrary interpretation would render FCMA's express recognition of state extraterritorial jurisdiction (16 U.S.C.A. §1856(a)) virtually meaningless, limiting such jursidiction to pleasure boats and those few commercial fishing vessels lighter than five net tons.

We also find significance in the fact that, because the federal government has developed no swordfish regulations, the exclusion of any such state regulation would create the danger of wholly unregulated exploitation of that species in coastal waters and on the high seas, thus resulting in the possibility of substantial or, indeed, total depletion of an important natural resource. Had Congress intended by its successive enactments such a drastic curtailment of the states' Skiriotes jurisdiction, it would have said so. On the contrary, though undoubtedly aware of various state fishing "registration" schemes such as California's, Congress avoided all references to the long established terms of art in the federal documentation laws, and premised continued state jurisdiction on the undefined and generic concept of local "registration."

As previously noted, the Comanche was licensed for commerical swordfishing. We think our broader interpretation of the term "registration" in FCMA prevents the anomalous result which would follow

if the state's extraterritorial jurisdiction over commercial fishing was preserved as to those boats in which the state had asserted only a limited identification and record-keeping interest, but was precluded as to vessels like the Comanche which it has specifically licensed to engage in the activity of swordfishing.

From the foregoing we conclude that section 1856(a), fairly read, is intended to permit a state to regulate and control the fishing of its citizens in adjacent waters, when not in conflict with federal law, when there exists a legitimate and demonstrable state interest served by the regulation, and when the fishingis from vessels which are regulated by it and operated from ports under its authority. (See Fidell, Enforcement of the Fishery Conservation and Management Act of 1976: The Policeman's Lot (1977) 52 Wash. L.Rev. 513, 593-597, and fn. 467; cf., Northwest Trollers Ass'n. v. Moos (Wash. 1977) 568 P.2d. 793, 795.)

We conclude that federal law does

not preclude application of California's fishing laws to defendants' activities.

3. Territorial Limits of California Law

Relying on People v. Buffum (1953) 40 Cal.2d. 709, defendants argue that, apart from any federal conflict, their conduct is not punishable in California as a matter of traditional state law beause, standing independently, the violations occurred beyond California territory. However, it is well established that unless the Legislature provides otherwsie, those defendants are punishable in California ". . . who commit, in whole or in part, any crime within . . ." California. (Pen. Code, §27, subd. 1.) Similarly, Penal Code section 778a provides, "Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same

manner as if the same had been committed entirely within California. Defendants contend that any of their acts which occurred within California were mere preparations and did not constitute technical attempts to violate fishing regulations. (40 Cal.2d. at p. 718.)

Buffum is inapplicable. The completed violations in this case before us occurred well within the state boundaries as defined by our state Constitution and statutes. (Cal.Const., art. III, §2; Gove.Code. §§170-171, all supra.) These are the limits to which the Legislature implicitly intended to extend California's criminal laws, including Fish and Game Code section 2000. As we have observed, California's territorial boundaries and, therefore, the extent of its criminal jurisdiction are restricted when they conflict with federal and international law. The factual record before us presents no such conflict.

The judgments of conviction are affirmed.

RICHARDSON, J.

WE CONCUR:

BIRD, C.J.
TOBRINER, J.
MOSK, J.
CLARK, J.
MANUEL, J.
NEWMAN, J.

C O P Y

PEOPLE v. WEEREN et al.

Crim. 21078

CONCURRING OPINION BY MOSK, J.

I concur.

Since title to submerged lands in the waters of Santa Barbara channel was settled in the United States by five votes[1/] of the Supreme Court in United States v. California (1965) 381 U.S. 139, I am under compulsion to accept the result.

I find it difficult to believe, however, that Congress did not intend when it enacted the Submerged Lands Act, to recognize the respective coastal states' original boundaries. As Justice Black observed in the dissent for himself and Justice Douglas (id., p. 188),

1/ Chief Justice Warren, who had been Governor of California, and Justice Clark, who had been Attorney General of the United States, did not participate.

during congressional deliberations on the measure the term "historic State boundaries" was used 813 times, "original boundaries" 121 times and "traditional" boundaries 114 times. A cursory examination of Appendices A and C to Justice Black's dissent (following p. 213) should convince any objective viewer that the waters within a line from Point Conception to Point Loma are inland waters of California surrounding California territory: San Miguel Island, Santa Rosa Island, Santa Cruz Island, Anacapa Island, Santa Barbara Island, San Nicolas Island, Santa Catalina Island and San Clemente Island.

Rather than to disapprove People v. Foretich (1970) 14 Cal.App.3d. Supp. 6, as the majority do here, I am impressed by its rationale that the high court in California II merely defined the limits of a grant of real estate in the Submerged Lands Act and did not clearly intend to alter the political boundaries of the State of California (id., p. 13). (Also see Alabama v. Texas (1954) 347 U.S. 272.) And as the Foretich court

pointed out, the high court referred to by name and did not disapprove People v. Stralla (1939) 14 Cal.2d. 617, in which this state's jurisdiction over waters of Santa Monica Bay, from Point Vicente to Point Dume and extending as much as ten miles from the shoreline, was upheld. Application of the headland-to-headland principle was also approved as to San Francisco Bay in 34 Ops.Cal.Atty.Gen. 260 (1959).

The majority reach the correct conclusion as to the application of California's police power to the waters of Santa Barbara channel. It is my hope, however, the an opportunity will arise for the State of California to appear again before the Supreme Court on an issue involving its title to submerged lands and political sovereignty over waters from headland-to-headland within the several bays and cahnnels along our coastline. The high court's more recent deference to state's rights might result next time in a clearer recognition of the traditional

coastal boundary of California.

MOSK, J.

APPENDIX F

IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent

v.

HANS H.H. WEEREN, ET. AL.,

Defendants and Appellants.

CRIM. NO. 21078

APPEAL

COUNTY VENTURA

SUPERIOR COURT NO. APP 824

MUNI. COURT NO.: A024647
A024648

The above-entitled cause having been heretofore fully argued, and submitted,

IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the judgments of conviction of the Municipal Court of the County of Ventura in the above-entitled cause, are hereby affirmed.

I, Clerk of the Supreme Court of the State of California, do hereby

certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 24th day of March, 1980.

WITNESS my hand and the seal of the Court, this 16th day of May, 1980.

Clerk,

[Seal]

By: _____
Deputy
GLENN E. SCHNEIDER

APPENDIX G

THE CONSTITUTION
OF THE UNITED STATES

ARTICLE I

SECTION 8. The congress shall have Power. . .;

To regulate Commerce with foreign Nationa,s and among the several States, and with the Indian Tribes; . . .

ARTICLE VI

. . .

This constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. . . .

AMENDMENT XIV

(Ratified July 9, 1868)

SECTION I. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

16 U.S.C.

§ 1811. Fishery Conservation Zone

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 1812. Exclusive Fishery Management Authority

The United States shall exercise exclusive fishery management authority, in the manner provided for in this chapter, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

§ 1851. National Standards for Fishery Conservation and Management

(a) In General.--Any fishery management plan prepared, and any regulation to implement any such plan,

pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management: . . .

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation or other entity acquires an excessive share of such privileges. . . .

§ 1856. State Jursidiction

(a) In General.--Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jursidiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries,

unless such vessel is registered under the laws of such State. . . .

TRANSFERS OF MORTGAGED VESSELS AND ASSIGNMENT OF VESSEL MORTGAGES

46 U.S.C.

§961. Surrender of Documents; Termination of Mortgagee's Interest; Sale of Mortgaged Vessel

(a) The documents of a vessel of the United States covered by a preferred mortgage may not be surrendered (except in the case of the forfeiture of the vessel or its sale by the order of any court of the United States or any foreign country) without the approval of the Secretary of Transportation. The Secretary shall refuse such approval unless the mortgagee consents to such surrender.

(b) The interest of the mortgagee in a vessel of the United States covered by a mortgage, shall not be terminated by the forfeiture of the vessel for a violation of any law of the United States, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission

which constituted such violation.

APPENDIX H

VENTURA COUNTY MUNICIPAL COURT
STATE OF CALIFORNIA
OXNARD DEPARTMENT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HANS H.H. WEEREN, STEVEN C. JENNINGS, and RONALD TEGLAND,

Defendants.

Case No.: A024647
A024648
A024649

ORDER OF FORFEITURE

Defendants Hans Weeren and Steven Jennings having been convicted of section 2000 of the California Fish and Game Code, and the court having found that the boat named the Comanche is a device or apparatus designed to be, and capable of being, used to take fish and was used in committing the offense charged, and of which said defendants were convicted.

It is therefore ordered, pursuant

to section 12157 of the California Fish and Game Code, that the boat named Comanche be forfeited to the Department of Fish and Game of the State of California.

It is further ordered that the forfeiture be suspended for 36 months on the following terms and conditions:

1. All aviation radio equipment on board the Comanche on September 28, 1977 actually be forfeited.

2. The boat not be used to violate any laws, city, county, state or federal.

3. The boat not be used to swordfish with any assistance, direct or indirect, from any aircraft.

4. The boat not swordfish without a California swordfishing permit, with the number displayed.

5. The boat not swordfish at any time when it has on board any radio equipment except normal marine radio.

DATED: December 19, 1977

/s/
Edwin M. Osborne,
Judge of the Municipal Court

I have received a copy of this order.

I UNDERSTAND AND AGREE TO EACH OF THE CONDITIONS ABOVE.

Dated: _____

Signed: /s/
Ronald Tegland

Supreme Court, U. S.
FILED
JUL 15 1980
MICHAEL RODAK, JR., CLERK

NO. 79-1978

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1979

HANS H. H. WEEREN and
STEPHEN C. JENNINGS,

Petitioners,

v.

CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

RESPONDENT'S BRIEF IN OPPOSITION

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NO. 79-1978

IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1979

HANS H. H. WEEREN and
STEPHEN C. JENNINGS,

Petitioners,

v.

CALIFORNIA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the State of California has jurisdiction over petitioners' fishing activities, illegal under California law, where the swordfish taken were harpooned in the Pacific Ocean off the coast of California more than three nautical miles from shore and from any island, where the vessel from

which the fish were harpooned was registered and maintained in California for commercial swordfish fishing and was also federally documented, where petitioners, who were fishing from the vessel, were California citizens, and where there are no federal regulations whatsoever relating to the taking of swordfish?

2. Whether petitioners have standing to contest the suspended forfeiture of the vessel where neither the owner nor the mortgagee is a party to these proceedings and where the record fails to show that any objection has ever been raised by the owner or mortgagee?

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INTRODUCTION

Respondent, the State of California, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari, by which petitioners seek review of the judgment of the Supreme Court of the State of California, entered on May 14, 1980, affirming petitioners' convictions.

OPINIONS BELOW

On March 24, 1980, the seven justices of the Supreme Court of the State of California rendered an opinion unanimously affirming petitioners' convictions in the Ventura County Municipal Court, Oxnard Department, for violation of California Fish and Game Code section 2000, incorporating the provisions of Title 14, California Administrative Code, section 107(g)(2), which prohibits

the taking of swordfish with the direct assistance of an aircraft. A copy of the opinion appears at Appendix E to the Petition for Writ of Certiorari and is reported at 26 Cal.3d 654, 163 Cal.Rptr. 255, 607 P.2d 1279 (1980).

Thereafter, petitioners Weeren and Jennings petitioned unsuccessfully for rehearing in the California Supreme Court. The petition for rehearing was denied on May 14, 1980, at which time the case became final. A copy of the order denying the petition for rehearing is attached to this opposition at Appendix A.

Prior to the hearing before the California Supreme Court, each petitioner had been convicted in Ventura County Municipal Court, after the denial by that court of petitioners' motion to

dismiss the charge for lack of subject matter jurisdiction. The Ventura County Superior Court Appellate Department reversed the judgment (Petn. for Writ of Cert., App. A.) in an opinion later vacated by operation of law when the case was transferred to the California Court of Appeal. (Petn. for Writ of Cert., App. B.) The California Court of Appeal also reversed the judgment of the Ventura County Municipal Court. (Petn. for Writ of Cert., App. C.) The opinion of the California Court of Appeal is found at 155 Cal.Rptr. 789 (1979), but is officially unpublished. The State of California petitioned for rehearing but the petition was denied. A copy of the order denying rehearing is attached to this opposition at Appendix B.

Thereafter respondent State of

California petitioned the California Supreme Court for a hearing. This petition was granted. (Petn. for Writ of Cert., App. D.)

JURISDICTION

The grounds for jurisdiction of this court relied upon by petitioners Weeren and Jennings appear in the petition at page 2. For the reasons set forth in the Argument below, respondent State of California urges that jurisdiction does not lie.

Under California Rules of Court, Rule 24, the decision of the California Supreme Court became final on May 14, 1980, the date that the petition for rehearing was denied. The petition for writ of certiorari was filed by the Clerk of this Court on June 16, 1980, and thus was within the period permitted

for the timely filing of a petition. (28 U.S.C. § 2101(d); former U.S.Sup.Ct. Rule 22(1).)

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions relied upon by petitioners are set out in Appendix G to the petition at pages G-1 through G-2.

Respondent relies upon Article III, section 2, of the United States Constitution, which provides in relevant part:

> "Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . ."

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The statutory provisions relied upon by petitioners are set out in Appendix G to the Petition at pages G-2 through G-6.

Respondent State of California relies on the statutory and regulatory provisions set out below.

16 United States Code section 1852 provides in relevant part:

> "(a) Establishment
>
> "There shall be established, within 120 days after April 13, 1976, eight Regional Fishery Management Councils, as follows:
>
> ". . . .
>
> "(6) Pacific Council
>
> "The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington,

and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. . . .

". . . .

"(h) Functions

"Each Council shall, in accordance with the provisions of this chapter--

"(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary. . . .

". . . ."

16 United States Code section 1856 provides in relevant part:

"(a) In general

"Except as provided in

subsection (b) of this section nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

". . . ."

California Fish and Game Code section 2000, provides in relevant part:

"It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or regulations made pursuant thereto. . . ."

14 California Administrative

Code section 107 provides in relevant part:

"107. Broadbill Swordfish. Broadbill swordfish may not be taken for commercial purposes except by the holder of a reevocable permit issued by the department, and as here provided.

". . . .

"(g) Methods of Take.

". . . .

"(2) Aircraft may not be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit.

". . . ."

California Fish and Game Code section 7880 provides:

"§ 7880. Registration of vessels. Every person owning or

operating any vessel used in connection with fishing operations shall, for the purpose of identification and registration, carry in plain sight, on each side of the vessel, a Department of Fish and Game registration number."

California Fish and Game Code section 7887 provides in relevant part:

"7887. Certificate of boat registration. Every person who owns or operates a vessel in public waters in connection with fishing operations for profit in this State, or bringing fish into this State, or who, for profit, permits persons to fish therefrom, shall file a boat registration statement with the department, on a form to be provided by the department.

". . . ."

California Fish and Game Code section 7888 provides:

"7888. Contents of descriptive statement

"The statement shall include the following:

"(a) The owner's name and address.

"(b) The operator's name and address.

"(c) The name, if any, of the vessel.

"(d) The Department of Fish and Game registration number.

"(e) The State of California or United States document number.

"(f) The length and breadth overall.

"(g) The home port.

"(h) The year built.

"(i) The horsepower, if propelled by motive power.

"(j) The type of gear.

"(k) The amount of time spent in commercial fishing."

California Vehicle Code section 9840 provides in relevant part:

". . . .

"(g) 'Undocumented vessel' means any vessel which is not required to have and does not have a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto.

". . . ."

California Vehicle Code section 9853 provides in relevant part:

"§ 9853. Application for number

"The owner of each vessel requiring numbering by this state shall file an initial application for a number with the department [of Motor Vehicles]. . . . The application shall contain the true name and address of the owner and of the legal owner, if any, and the builder's hull number or any hull number of the vessel as may be required by the department. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of five dollars ($5)."

California Vehicle Code section 9853.1 provides in relevant part:

"§ 9853.1 Issuance of certificate of ownership and certificate of number

"Upon receipt of the application

in approved form, the department shall issue a certificate of ownership . . . . stating the number issued to the vessel and the name and address of the owner."

California Vehicle Code section 9873 provides in relevant part:

"§ 9873. Undocumented vessels not required to be numbered

"An undocumented vessel shall not be numbered under this chapter if it is:

"(a) Already covered by a number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another state; provided, that such undocumented vessel shall be subject to the numbering requirements of this

chapter if it has changed its state of principal use and has been within this state for a period in excess of 90 consecutive days.

". . . ."

STATEMENT OF THE CASE

The facts relating to the offense are set out in the opinion of the Supreme Court of the State of California (Petn. for Writ of Cert., App. E, pp. E-2 through E-4), as follows:

". . . [California] Fish and Game Code section 2000 . . . generally and in relevant part provides: 'It is unlawful to take any . . . fish . . . except as provided in this code or regulations made pursuant thereto.' The convictions are based on trial court findings that defendants with the use of a spotter

aircraft took broadbill swordfish contrary to the regulations of the Fish and Game Department (Cal. Admin. Code, tit. 14, § 107, subd, (g)(2)). This regulation specifically mandates that 'Broadbill swordfish may not be taken for commercial purposes except by the holder of a revocable permit issued by the department, and as herein provided. . . . (g) Methods of Take. . . . (2) Aircraft may not be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit.'

"Both of the defendants are citizens and residents of California holding commercial fishing licenses issued by the State of California.

Their 19-ton vessel, the Comanche, and the accompanying spotter aircraft, were both based in Oxnard, Ventura County, on California's southern coastline. The Comanche was licensed for commercial fishing for swordfish under Fish and Game Code sections 7880-7890. It carried an appropriate 'certificate of boat registration' and boat registration number required by those statutes. However, because it also was enrolled with a 'United States document number,' it did not bear the California identification number contemplated by Vehicle Code sections 9840-9860.

"On September 28, 1977, California Fish and Game officials boarded the Comanche at a point 10

miles south-southeast of Anacapa Island in waters of the Santa Barbara Channel, situated more than 3 nautical miles from the shore of either the mainland or of any California coastal islands. The officials determined that two swordfish seized on the Comanche had been caught at that location by defendants, with the help of radio communication and directions from a spotter aircraft. The officials remained aboard while the Comanche sailed under their direction to Channel Island Harbor in Ventura County."

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari in this case should be denied. Skiriotes v. Florida, 313 U.S. 69, 85 L.Ed. 1193, 61 S.Ct. 924 (1941), held that a state may exercise criminal jurisdiction over its own citizens extraterritorially on the high seas, so long as the state's legitimate interests were involved and the state statute did not conflict with any act of Congress. Since 1941, Skiriotes has been relied upon by this Court and other courts in many decisions in regards to fishing and in other contexts involving the police power of the state. Skiriotes was rightly decided and supports the decision of the California Supreme Court in

this case.

In addition, the Fishery Conservation and Management Act, 16 U.S.C. section 1856(a), provides that no state may directly or indirectly regulate fishing which is engaged in by any fishing vessel outside state boundaries unless such vessel is registered under the laws of such state. In the instant case, if the point at which the swordfish were taken was within the State of California, the State of California clearly had jurisdiction to enforce its fishing regulations. On the other hand, if the area was outside the State of California, the State of California still had jurisdiction under Skiriotes and under 16 United States Code section 1856(a) because petitioners Weeren and Jennings were California citizens and

the vessel from which they fished was registered under California law for purposes of commercial swordfish fishing although it was also federally documented. Further, there are no conflicting federal laws or regulations relating to the taking of swordfish.

Petitioners have no standing to question the suspended forfeiture of the vessel since they do not own or have any interest in the vessel. They cannot invoke the jurisdiction of this court to vindicate the rights of a third party.

ARGUMENT

I

THE DECISION OF THE CALIFORNIA SUPREME COURT IS CONSISTENT WITH THE DECISION OF THIS COURT IN SKIRIOTES v. FLORIDA, 313 U.S. 69 (1941), WHICH HELD THAT STATES MAY REGULATE EXTRATERRITORIAL ACTIVITIES AFFECTING THE STATE'S INTERESTS, AND IS FURTHER CONSISTENT WITH THE FISHERY CONSERVATION AND MANAGEMENT ACT, WHICH AUTHORIZES STATE REGULATION OF EXTRATERRITORIAL FISHING ACTIVITIES OF VESSELS REGISTERED WITHIN THE STATE

Petitioners ask that this Court grant the Petition for Writ of Certiorari so that this Court's decision in Skiriotes v. Florida, supra, may be reconsidered. (Petn. pp. 10, 11.) Petitioners argue that Skiriotes is no longer sound law and urge that states do not have judicial jurisdiction over

persons acting outside their territory. (Petn. for Writ. of Cert., p. 11.)[1/]

Skiriotes was decided in 1941. The decision itself has never been questioned in any subsequent reported decision of this Court or of any subordinate court of the United States, or of any court of any state of the United States. Insofar as applicable in this case, Skiriotes v. Florida, supra,

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1/ Although respondent State of California argued that the Santa Barbara Channel (where the swordfish were harpooned) was within California's seaward boundaries, the California Supreme Court held that the point at which the swordfish were harpooned was beyond the state boundaries of California as defined for purposes of state/federal relations (Petn. for Writ. of Cert., App. E, pp. E-18 through E-20), but held that it was within the area in which California statutes could be applied. (Petn. for Writ of Cert., App. E, pp. E-28 through E-29.)

recognized that if the United States may control the conduct of its citizens on the high seas, a state could likewise govern the conduct of its citizens on the high seas with respect to matters in which the state has a legitimate interest and where there is no conflict with the acts of Congress. (Skiriotes v. Florida, supra, 313 U.S. at 77, 85 L.Ed. at 1200, 61 S.Ct. at 929.) This court observed in Skiriotes that when its action does not conflict with federal legislation, the sovereign authority of the state over the conduct of its citizens upon high seas is analogous to the sovereign authority of the United States over its citizens in like circumstances. (Skiriotes v. Florida, supra, 313 U.S. at 78-79, 85 L.Ed. at 1200-1201, 61 S.Ct. at 920-930.) The Court

noted in the opinion that while the Florida statutory prohibition applied to waters within the territorial limits of the State of Florida, the state had applied it to the defendant at the place of his operations. The Court stated that if the state in fact had the power to prohibit the conduct of its citizens at that place, it was not the concern of the federal constitution as to the ruling of the state court regarding the extent of the state's territorial waters. (Skiriotes v. Florida, supra, 313 U.S. at 79, 85 L.Ed. at 1201, 61 S.Ct. 930.)

In United States v. Louisiana, 363 U.S. 1, 78-79 4 L.Ed.2d 1025, 1072-1073, 805 S.Ct. 961, 1004 (1960) in note 127, this Court relied on Skiriotes in

stating that certain acts which Louisiana alleged it had performed, including the passing and enforcing of laws regulating fishing, trolling and dredging of submerged lands and the granting of leases for the cultivating and taking of oysters, fish and shrimp, constituted police power measures which Louisiana could enforce against its citizens beyond its boundaries. In the 1975 case of United States v. Alaska, 422 U.S. 184, 198, 45 L.Ed.2d 109, 121, 95 S.Ct. 2240, 2250-2251, the court cited Skiriotes in support of the statement that during Alaska's territorial period, the United States properly enforced its fish and wildlife regulations at a point off Alaska more than three miles from shore. Similarly, in Askew v. American

Waterways Operators, Inc., 411 U.S. 325, 334, 343, 36 L.Ed.2d 280, 287, 293, 93 S.Ct. 1590, 1596, 1601 (1975), the Court relied on Skiriotes, among other authorities, in concluding that sea to shore pollution has historically been within the police power of the states except where the federal and state provisions conflict. (See also United States v. Perez-Herrera, 610 F.2d 289, 290-91 (9th Cir. 1980) [defendant arrested at a point 70 miles from the United States for attempting to import drugs; held, citing authorities including Skiriotes, that Congress could regulate the extra-territorial acts of United States citizens].)

In United States v. Sylvester, 605 F.2d 474, 475 (9th Cir. 1979), an Alaska statute prohibited the sale of

certain bear hides and skulls. Both the delivery and most of the payment had been made in New Mexico. The court of appeals applied a federal statute making it an offense to sell in interstate commerce wildlife taken in violation of state law. The court noted at pages 475-476:

> "We also agree with the district judge that there is no prohibition against the extraterritorial enforcement of the Alaska provision. As he properly stated, 'a State may reach beyond its borders under its police power, to regulate game and fish if those regulations have a sufficient nexus with the protection and preservation of wildlife within the State. Silz v. Hesterbderg, 211 U.S. 31, 29 S.Ct.

10, 53 L.Ed. 75 (1980); Bayside Fish Flour Co. v. Gentry, 297 U.S. 422, 56 S.Ct. 513, 80 L.Ed. 772 (1936).' In addition, there must be 'a sufficient relationship between the regulating State and the person whose conduct is regulated. Skiriotes v. Florida, 313 U.S. 69 [61 S.Ct. 924, 85 L.Ed. 1193.] (1941).'" (See also State v. Bundrant, 546 P.2d 530, 543-44, 547-556 (Alaska Sup.Ct. 1976), app. dism. sub nom. Uri et al. v. Alaska, 429 U.S. 806, 50 L.Ed.2d 66, 97 S.Ct. 40 (1976); State v. Sieminski, 556 P.2d 929, 933 (Alaska.Sup.Ct. 1976); Felton v. Hodges, 374 F.2d 337, 339-340 (5th Cir. 1967), cert. denied 389 U.S. 971, 19 L.Ed.2d 461, 88 S.Ct. 467 (1967).)

Clearly there is no need to reconsider Skiriotes at this time, for its holding is well-established and sound. California's interest in protecting its valuable fish population is clear, and petitioners Weeren and Jennings were California's citizens and residents. Moreover, both the vessel and the aircraft were based in California, and California facilities were intended for use both in the landing and in the selling of the swordfish. California had a real and continuing interest in this case, and therefore had jurisdiction to

protect its interests.[2/] (See Petn. for Cert., App. E., pp. E-22 through E-23.)

Petitioners also urge that certiorari should be granted on the theory that the Fishery Conservation and Management Act (FCMA) has

---

2/ In addition, petitioners seek to raise as a matter of due process, the question whether the California Supreme Court correctly interpreted the intent of the California Legislature in defining the state boundaries for California enforcement of state criminal law. (Petn. for Writ of Cert., pp. 15-17.) However, under Skiriotes v. Florida, supra, and the Fishery Conservation and Management Act, California clearly has the right in any event to regulate the petitioners' offshore conduct. Petitions for writ of certiorari should be granted only when substantial federal questions are in issue. (28 U.S.C. § 1257(3).) Here the issue of the intent of the State Legislature involves only state law and therefore the petition for writ of certiorari should be denied. (See Skiriotes v. Florida, supra, 313 U.S. 69, 79, 85 L.Ed. 1193, 1201, 61 S.Ct. 924, 930.)

preempted all state regulations in waters more than three miles from shore. (Petn. for Writ of Cert. pp. 12-14.) However, petitioners fail to recognize that 16 U.S.C. section 1856(a), set out in the Petition for Writ of Certiorari at page G-4, expressly provides that a state may regulate fishing engaged in by fishing vessels outside its boundaries where the vessels are registered under the laws of the state. Here, of course, the fishing was done in the Santa Barbara Channel, off the California shore. As noted in the opinion of the California Supreme Court, the vessel was registered with the State of California for the purposes of taking swordfish and was also federally documented. (App. E, pp. E-3 through E-4, E-23 thorough E-28.)

There are also no conflicting federal laws or regulations and no federal fishery management plans relating to the taking of swordfish. As observed by the California Supreme Court, an interpretation prohibiting state involvement for conservation purposes where as here there is no federal regulation relating to swordfish, would render the FCMA's express recognizition of state extraterritorial jurisdiction in 16 U.S.C. 1856(a) virtually meaningless, for such jurisdiction would be limited to pleasure boats and a few commercial fishing vessels which are less than five net tons in weight. (Petn. for Writ of Cert., App. E, p. E-25.) Certainly in a federal statute pertaining to fishing, Congress could not have intended to give a state extraterritorial jurisdiction over those

vessels as to which the state has asserted an interest only in identifying and record keeping (such as sailboats and speedboats) but to deny the state jurisdiction over vessels it has specifically licensed to engage in commercial fishing where commercial fishing occurs immediately off the coast of the state. In this case California has a legitimate and clear interest in regulating the fishing of its citizens and the vessels it has registered to engage in commercial fishing. Since no federal regulations have been promulgated under the FCMA relating to swordfish and there is applicable no conflicting federal law, it must be concluded then that the California Supreme Court was correct in holding that federal law does not preclude the application of California's fishing laws to petitioners'

activities in taking swordfish. (See Fidell, "Enforcement of the Fishery and Conservation Management Act of 1976: The Policeman's Lot," 52 Wash. L.Rev. 513, 593-97, and fn. 467 (1977); cf. Northwest Trollers Assn v. Moos, 89 Wash.2d 1, 568 P.2d 793, 795 (Wash.Sup.Ct. 1977).)[3/]

3/ Petitioners argue at pages 11-12 of their petition that any regulation by California of offshore waters is contrary to 16 U.S.C. section 1851, which is set out in the Petition for Writ of Certiorari at Appendix G, pages G-3 through G-4 to the petition. However, on its very face, section 1851 applies only to fishery conservation management plans which are prepared by regional fishery management councils. (See 16 U.S.C. § 1852, subsection (h), which requires that each council, established on geographical bases, prepare and submit fishery management plans with respect to each fishery within its geographical area of responsibility.) Clearly section 1851 was designed to prevent the situation in which access to certain fisheries is limited to residents of a particular state (cf. Douglas

Indeed, it is clear that here there is no federal preemption of California's regulations, but instead Congress has in fact expressly authorized California to issue and enforce its conservation regulations in the absence of conflicting federal regulations, the situation present in this case.

3/ (Cont'd)

v. Seacoast Products, 431 U.S. 265, 283-87, 52 L.Ed.2d 304, 318-321, 97 S.Ct. 1740 (1977). In contrast, section 1856(a) recognises that if a vessel is registered within a state, state interests become involved and extraterritorial state regulation of fishing by the vessel is permitted in the absence of conflicting federal fishery regulations.

II

PETITIONERS WEEREN AND JENNINGS HAVE NO STANDING TO QUESTION THE SUSPENDED FORFEITURE OF THE VESSEL WHERE NEITHER OF THEM IS THE OWNER OR THE MORTGAGEE OF THE VESSEL

Although the states may follow their own procedure as to who may raise constitutional questions, this Court has held that it cannot accept for hearing any state court proceeding which does not meet the case and controversy and standing requirements of Article III of the United Stated Constitution (Bateman v. Arizona, 429 U.S. 1302, 1305, 50 L.Ed.2d 32, 36, 97 S.Ct. 1, 3 (1976); see Doremus v. Board of Education, 342 U.S. 429, 434, 96 L.Ed. 475, 480, 72 S.Ct. 394, 397 (1952).) Jurisdiction extends only to actual cases and controversies. (Neb.

Press Assn. v.Stuart, 427 U.S. 539, 546, 49 L.Ed.2d 683, 690, 96 S.Ct. 2791, 2797 (1976); See generally Stern & Gressman, Supreme Court Practice § 3.35 (5th ed. 1978).)

In order to have standing, a party must have a personal stake in the outcome of the controversy. (Baker v. Carr, 369 U.S. 186, 204, 7 L.Ed.2d 663, 674, 82 S.Ct. 691, 703 (1962).) In addition, the controversy must touch upon the legal relations of parties having adverse legal interests. (Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41, 81 L.Ed. 617, 621, 57 S.Ct. 461, 464 (1937).) If these requirements are met at all, they are generally shown by the complaining party's demonstration that he himself has suffered some

threatened or actual legal injury resulting from the asserted illegal action. (Linda R. S. v. Richard D., 410 U.S. 614, 617, 618, 35 L.Ed.2d 536, 540-541, 93 S.Ct. 1146, 1148-1149 (1973). See Stern & Gressman, Supreme Court Practice § 3.35 at p. 249 and cases cited therein.)

This Court has held that a person cannot invoke the jurisdiction of the United States Supreme Court to vindicate the rights of a third party. (Hanson v. Denckla, 358 U.S. 235, 244, 2 L.Ed.2d 1283, 1292, 78 S.Ct. 1228, 1234-1235 (1958).)

Here petitioners seek to litigate the propriety of the suspended forfeiture of the vessel. However, neither petitioner is the owner of the vessel; nor is either petitioner a

mortgagee of the vessel. (See Petn. for Writ of Cert., pp. 14-15.) The owners and any mortgagee of the vessel are not parties to this proceeding.

Moreover, the record does not reflect that the owner or the mortgagee has ever objected to these proceedings.

Clearly under these circumstances, the Petition for Writ of Certiorari should be denied for lack of jurisdiction to determine the propriety of the suspended forfeiture, for petitioners have not met the case and controversy and standing requirements of this Court on this issue.

CONCLUSION

It is clear that California had jurisdiction to regulate petitioners' fishing, for petitioners Weeren

and Jennings are California citizens, the vessel and the airplane were maintained in California, the vessel was registered for purposes of commercial fishing for swordfish in California, the fishing took place off the California coast, and California facilities were intended for use in both landing and selling the swordfish. The Fishery Conservation and Management Act expressly permits state regulation of vessels registered in the state as was the vessel in this case where as here there are no conflicting federal laws or regulations. In addition, petitioners have no standing to raise the question of any impropriety as to the suspended forfeiture of the vessel.

Clearly in this case, the

opinion of the Supreme Court of the State of California affirming petitioners' convictions should not be disturbed. The Petition for Writ of Certiorari should be denied.

For these reasons, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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A P P E N D I X A

The Order of the California Supreme Court denying rehearing, is set out in the Minutes of thek California Supreme Court, page 1, California Official Reports, Official Advance Sheets, Number 16, dated June 10, 1980, as follows:

". . . .

"San Francisco, May 14, 1980.

". . . .

"Crim. 21078 -- People v. Weeren, et al. [26 Cal.3d 654]. Appellants' petition for rehearing denied."

A P P E N D I X B

The order of the California Court of Appeal denying rehearing, is set out in the Minutes of the Court of Appeal, pages 45, 47-48, California Official Reports, Official Advance Sheets, Number 21, dated July 31, 1979, as follows:

"SECOND DISTRICT

"Los Angeles, June 28, 1979.

"Division Five

". . . .

"Crim 33706 -- People v. Weeren, et al. [93 Cal.App.3d 541]. The Court: Petition for rehearing denied.

". . . ."